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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-211*

13 **NANCY AGYAPAS TOTANES**  
14 **1004 Gamble Lane**  
15 **Escondido, CA 92029**

**DEFAULT DECISION AND ORDER**

16 **Registered Nurse License No. 465078**

[Gov. Code, §11520]

17 Respondent.  
18

19 **FINDINGS OF FACT**

20 1. On or about September 26, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs, filed Accusation No. 2013-211 against Nancy Agyapas Totanes (Respondent)  
23 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

24 2. On or about March 31, 1991, the Board of Registered Nursing (Board) issued  
25 Registered Nurse License No. 465078 to Respondent. The Registered Nurse License was in full  
26 force and effect at all times relevant to the charges brought in Accusation No. 2013-211 and will  
27 expire on January 31, 2013, unless renewed.

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3. On or about September 26, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-211, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136 and California Code of Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board. Respondent's address of record was and is: 1004 Gamble Lane, Escondido, CA 92029.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about October 11, 2012, the aforementioned documents were returned by the U.S. Postal Service marked "Moved Left no Address – Unable to Forward – Return to Sender."

6. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2013-211.

8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-211, finds

1 that the charges and allegations in Accusation No. 2013-211, are separately and severally, found  
2 to be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$7,991.50 as of December 6, 2012.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Nancy Agyapas Totanes has  
8 subjected her Registered Nurse License No. 465078 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered  
11 Nurse License based upon the following violations alleged in the Accusation which are supported  
12 by the evidence contained in the Default Decision Evidence Packet in this case:

13 a. Respondent has subjected her license to disciplinary action under Business and  
14 Professions Code sections 490 and 2761(f) in that on April 13, 2011, Respondent was convicted  
15 of violating Penal Code section 22, making a criminal threat of great bodily injury, a  
16 misdemeanor; and

17 b. Respondent has subjected her license to disciplinary action under Business and  
18 Professions Code section 490 and 2761(a) in that on May 30, 2012, Respondent was convicted of  
19 violating Penal Code section 484/487(a), grand theft and Penal Code section 476(a), issuing an  
20 insufficient check with the intent to defraud, felonies;

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 465078 heretofore issued to Respondent Nancy Agyapas Totanes is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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This Decision shall become effective on MAY 2, 2013.

It is so ORDERED APRIL 2, 2013.

  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

70655688.DOC  
DOJ Matter ID:SD2012703489

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
Deputy Attorney General  
4 State Bar No. 120482  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2095  
7 Facsimile: (619) 645-2061  
Attorneys for Complainant  
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9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013 - 211**

13 **NANCY AGYAPAS TOTANES**  
14 **1004 Gamble Lane**  
**Escondido, CA 92029**

**A C C U S A T I O N**

15 **Registered Nurse License No. 465078**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about March 31, 1991, the Board of Registered Nursing issued Registered  
24 Nurse License Number 465078 to Nancy Agyapas Totanes (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on January 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or  
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
9 following:

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

12  
13 10. Section 2765 of the Code states:

14 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
15 made to a charge substantially related to the qualifications, functions and duties of a  
16 registered nurse is deemed to be a conviction within the meaning of this article. The  
17 board may order the license or certificate suspended or revoked, or may decline to  
18 issue a license or certificate, when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal or when an order granting probation is made  
19 suspending the imposition of sentence, irrespective of a subsequent order under the  
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his  
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
guilty, or dismissing the accusation, information or indictment.

## 20 REGULATORY PROVISIONS

21 11. California Code of Regulations, title 16, section 1444, states:

22 A conviction or act shall be considered to be substantially related to the  
23 qualifications, functions or duties of a registered nurse if to a substantial degree it  
24 evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

25 (a) Assaultive or abusive conduct including, but not limited to, those violations  
26 listed in subdivision (d) of Penal Code Section 11160.

27 (b) Failure to comply with any mandatory reporting requirements.

28 (c) Theft, dishonesty, fraud, or deceit.



1 (d) Any conviction or act subject to an order of registration pursuant to Section  
2 290 of the Penal Code.

3 12. California Code of Regulations, title 16, section 1445 states:

4 . . . .

5 (b) When considering the suspension or revocation of a license on the grounds  
6 that a registered nurse has been convicted of a crime, the board, in evaluating the  
7 rehabilitation of such person and his/her eligibility for a license will consider the  
8 following criteria:

9 (1) Nature and severity of the act(s) or offense(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or offense(s).

12 (4) Whether the licensee has complied with any terms of parole, probation,  
13 restitution or any other sanctions lawfully imposed against the licensee.

14 (5) If applicable, evidence of expungement proceedings pursuant to Section  
15 1203.4 of the Penal Code.

16 (6) Evidence, if any, of rehabilitation submitted by the licensee.

### 17 COST RECOVERY

18 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
19 administrative law judge to direct a licensee found to have committed a violation or violations of  
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
21 enforcement of the case.

### 22 FIRST CAUSE FOR DISCIPLINE

23 (April 13, 2011 Criminal Conviction for Making a Criminal Threat on January 28, 2011)

24 14. Respondent has subjected her license to disciplinary action under sections 490 and  
25 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
26 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
27 follows:

28 a. On or about April 13, 2011, in a criminal proceeding entitled *People of the  
State of California v. Nancy A. Totanes*, in San Diego County Superior Court, case number  
CN287559, Respondent was convicted on her plea of guilty of violating Penal Code section 422,

1 making a criminal threat of great bodily injury, a misdemeanor pursuant to Penal Code section 17,  
2 subdivision (b)(4). An additional count of violating Penal Code section 148, subdivision (a)(1),  
3 resisting arrest, was dismissed pursuant to a plea agreement.

4 b. As a result of the conviction, on or about April 13, 2011, Respondent was  
5 granted three years summary probation, and ordered to complete an Anger Management course.  
6 Respondent was required to pay \$600 in fees and fines. A protective order was issued for the  
7 victim and her family.

8 c. The facts that led to the conviction are that on or about January 28, 2011, a  
9 licensing analyst with the California Department of Social Services Community Care Licensing  
10 Division arrived at Respondent's Residential Care Facility for the Elderly (RCFE) in Escondido  
11 as a result of a complaint. Accompanying the analyst was the division's Program Manager and a  
12 San Diego County Deputy Sheriff. The deputy had been asked to assist the analyst on a "preserve  
13 the peace" call during an inspection. During the analyst's inspection, Respondent threatened to  
14 kill the analyst with a gun at least three times. Respondent asked to borrow the deputy's gun so  
15 that she could shoot the analyst. Outside of the RCFE after the inspection, Respondent lunged at  
16 the analyst, but she was grabbed by the deputy before an assault occurred. Respondent resisted  
17 arrest and had to be taken to the ground where she was forcibly hand-cuffed. Respondent was  
18 arrested for threatening a public officer/employee and obstructing a peace officer. In a post-  
19 *Miranda* statement, Respondent admitted she threatened to kill the analyst.

## 20 SECOND CAUSE FOR DISCIPLINE

### 21 (May 30, 2012 Criminal Convictions for Grand Theft & Insufficient Funds Check)

22 15. Respondent has subjected her license to disciplinary action under sections 490 and  
23 2761, subdivision (f) of the Code in that Respondent was convicted of crimes that are  
24 substantially related to the qualifications, functions, and duties of a registered nurse. The  
25 circumstances are as follows:

26 a. On or about May 30, 2012, in a criminal proceeding entitled *People of the State*  
27 *of California v. Nancy A. Totanes, aka Nancy Agyapas Totanes*, in San Diego County Superior  
28 Court, case number CN306100, Respondent was convicted on her plea of guilty of violating

1 Penal Code section 484/487, subdivision (a), grand theft; and Penal Code section 476, subdivision  
2 (a), issuing an insufficient funds check with the intent to defraud, felonies. As a result of a plea  
3 agreement, the court dismissed additional counts of grand theft (Pen. Code, §§ 484/487(a)),  
4 financial elder abuse (Pen. Code, § 368(e)), fraudulent use of an access card (Pen. Code, §  
5 484g(a)), and two counts of false imprisonment of an elder (Pen. Code, §§ 236/368(f)).

6 b. As a result of the convictions, on or about June 27, 2012, Respondent was  
7 sentenced to three years formal probation and ordered to serve 130 days in the custody of the  
8 sheriff, with credit for 85 days. Respondent was further ordered to pay \$1,132 in fees, fines and  
9 restitution, and to comply with felony probation terms.

10 c. The facts that led to the convictions are that on or about March 16, 2011, the  
11 California Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) received  
12 a complaint from the California Department of Social Services Community Care Licensing  
13 (CCL) that Respondent was operating two unlicensed RCFE's located at 1004 and 1014 Gamble  
14 Lane in Escondido. As a result of the complaint, a law enforcement agent with the BMFEA  
15 conducted an investigation which revealed that the RCFE located at 1004 Gamble Lane had  
16 previously been licensed to Respondent's sister, Margaret, in 1990. The RCFE required a license  
17 because it provided assistance with activities of daily living such as toileting, bathing, food,  
18 medications, transportation, dressing, etc. Respondent had previously operated the RCFE at 1004  
19 Gamble Lane until her license was revoked in 1990. Respondent was excluded from owning  
20 and/or operating an RCFE; she was only permitted to work at an RCFE under a licensee's  
21 supervision. On June 7, 2010, Respondent's sister died. Upon her death, the RCFE licenses held  
22 by Respondent's sister terminated. Respondent did not report her sister's death to CCL and  
23 continued to operate the RCFE's at 1004 and 1014 Gamble Lane without a license. Respondent  
24 continued to charge two elderly patients a monthly fee for their board and care at the unlicensed  
25 facilities. Respondent also failed to return the personal belongings of an elderly resident worth  
26 \$1,100 to the resident's family after the resident's death. In January 2011, the CCL ordered  
27 Respondent to close both facilities and relocate all the residents. Subsequently, Respondent  
28 transported residents to other RCFE's without their families' knowledge or consent. After an

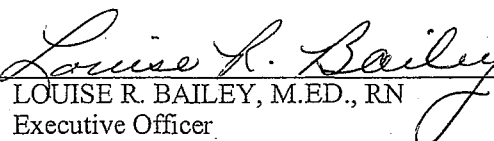
1 elderly resident died, Respondent issued the resident's family a check as a refund for the unused  
2 portion of the resident's rent, knowing there were insufficient funds in the account. Respondent  
3 also used a resident's ATM card to make unauthorized withdrawals in the amount of \$1,983.36.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
6 and that following the hearing, the Board of Registered Nursing issue a decision:

- 7 1. Revoking or suspending Registered Nurse License Number 465078, issued to Nancy  
8 Agyapas Totanes;
- 9 2. Ordering Nancy Agyapas Totanes to pay the Board of Registered Nursing the  
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
11 Professions Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.
- 13  
14

15 DATED: September 26, 2012

  
16 LOUISE R. BAILEY, M.ED., RN  
17 Executive Officer  
18 Board of Registered Nursing  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant

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